

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Birch Communications ) Complaint Nos. 684301
) 815575
Complaints Regarding ) 825550
Unauthorized Change of ) 835060
Subscribers' Telecommunications Carrier ) 836363
) 857988
) 947903
) 977137
) 982478
) 1024439
) 1034644
) 1083103
) 1174884
) 1205782
) 1312985
) 1315995
) 1367768

ORDER

Adopted: April 30, 2018

Released: May 1, 2018

By the Deputy Chief, Consumer Policy Division, Consumer & Governmental Affairs Bureau:

1. In this Order, we consider complaints<sup>1</sup> alleging that Birch Communications (Birch) changed Complainants' telecommunications service providers without obtaining authorization and verification from Complainants in violation of the Commission's rules.<sup>2</sup> We conclude that Birch has responded fully to the Complainants' complaints and has taken action to resolve the complaints.

2. Section 258 of the Communications Act of 1934 (Act), as amended by the Telecommunications Act of 1996 (1996 Act),<sup>3</sup> prohibits the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.<sup>4</sup> The Commission's implementing rules require, among other things, that a carrier receive individual subscriber consent before a carrier change may occur.<sup>5</sup> Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization in a format that meets the requirements of Section 64.1130; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an

<sup>1</sup> See Appendix.

<sup>2</sup> See 47 CFR §§ 64.1100 – 64.1190.

<sup>3</sup> 47 U.S.C. § 258(a).

<sup>4</sup> Id.

<sup>5</sup> See 47 CFR § 64.1120.

appropriately qualified independent third party to verify the subscriber's order.<sup>6</sup> The Commission also has adopted rules to limit the liability of subscribers when a carrier change occurs, and to require carriers involved in slamming practices to compensate subscribers whose carriers were changed without authorization.<sup>7</sup>

3. We received Complainants' complaints alleging that Complainants' telecommunications service providers had been changed without Complainants' authorization.<sup>8</sup> Pursuant to Sections 1.719 and 64.1150 of our rules,<sup>9</sup> we notified Birch of the complaints and Birch responded.<sup>10</sup> Birch has fully absolved Complainants of all charges assessed by Birch in a manner consistent with the Commission's liability rules.<sup>11</sup> Based on the information before us, we find that the complaints referenced herein have been resolved.<sup>12</sup>

4. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361 and 1.719 of the Commission's rules, 47 CFR §§ 0.141, 0.361, 1.719, the complaints against Birch Communications are RESOLVED.

5. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Nancy A. Stevenson  
Deputy Chief  
Consumer Policy Division

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<sup>6</sup> See 47 CFR § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 CFR § 64.1130.

<sup>7</sup> These rules require the carrier to absolve the subscriber where the subscriber has not paid his or her bill. If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change. See 47 CFR §§ 64.1140, 64.1160. Any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change. *Id.* Where the subscriber has paid charges to the unauthorized carrier, the Commission's rules require that the unauthorized carrier pay 150 percent of those charges to the authorized carrier, and the authorized carrier shall refund or credit to the subscriber 50 percent of all charges paid by the subscriber to the unauthorized carrier. See 47 CFR §§ 64.1140, 64.1170.

<sup>8</sup> See Appendix.

<sup>9</sup> 47 CFR § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); *id.* § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

<sup>10</sup> See Appendix.

<sup>11</sup> See 47 CFR § 64.1160. In December 2016 the Commission's Enforcement Bureau entered into a Consent Decree with Birch pursuant to which Birch absolved the complainants. See *Birch Communications, Inc.*, Order, 31 FCC Rcd 13510 (EB 2016). This order is not intended to alter or contradict the consent decree's terms, including with respect to liability.

<sup>12</sup> If any Complainant is unsatisfied with the resolution of its complaint, such Complainant may file a formal complaint with the Commission pursuant to Section 1.721 of the Commission's rules. *Id.* § 1.721. Such filing will be deemed to relate back to the filing date of such Complainant's informal complaint so long as the formal complaint is filed within 45 days from the date this order is mailed or delivered electronically to such Complainant. See *id.* § 1.719.

Consumer and Governmental Affairs Bureau  
APPENDIX

<u>COMPLAINT NUMBER</u>	<u>DATE OF COMPLAINT</u>	<u>DATE OF CARRIER RESPONSE</u>
684301	December 1, 2015	January 7, 2016
815575	February 17, 2016	March 19, 2016
825550	February 22, 2016	March 28, 2016
835060	February 26, 2016	March 31, 2016
836363	February 27, 2016	March 31, 2016
857988	March 10, 2016	April 11, 2016
947903	May 3, 2016	June 8, 2016
977137	May 13, 2016	May 17, 2016
982478	May 17, 2016	June 8, 2016
1024439	June 7, 2016	June 30, 2016
1034644	June 14, 2016	July 20, 2016
1083103	August 15, 2016	December 7, 2016
1174884	September 2, 2016	November 22, 2016
1205782	September 19, 2016	October 19, 2016
1312985	November 13, 2016	December 6, 2016
1315995	November 15, 2016	December 7, 2016
1367768	December 27, 2016	January 30, 2017